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09/690,409	10/17/2000	Hans-Peter Wild	PA 30573	3320	
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MARSHALL O'TOOLE GERSTEIN MURRAY & BORUN 6300 SEARS TOWER 233 SOUTH WACKER DRIVE			EXAMINER		
			TRUONG, THANH K		
CHICAGO, IL	60606-6402		ART UNIT	PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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Application No. Application No. Application No. Opinion No. Opi		- A It At At -		A1:4/-)					
Examiner Than K Truong The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE of THIS COMMUNICATION. Extensions of time may be available under the professors of 3°C RF 1.136(a). In one event, however, may a reply be timely filled If NO period for reply is perioded above, the maximum stabilities of the professors of 3°C RF 1.136(a). In one event, however, may a reply be timely filled If NO period for reply is specified above, the maximum stabilities period will apply seed will expire SIX (0) MONTH 15° from the mailing date of this communication for the period for reply is specified above, the maximum stabilities period will apply seed will expire SIX (0) MONTH 15° from the mailing date of the communication reply specified above, the maximum stabilities period will apply seed will expire SIX (0) MONTH 15° from the mailing date of the communication reply seed and several plants them stable period will apply seed will expire SIX (0) MONTH 15° from the mailing date of the communication reply seed will expire SIX (0) MONTH 15° from the mailing date of the communication reply seed will expire SIX (0) MONTH 15° from the mailing date of the communication reply seed will expire SIX (0) MONTH 15° from the mailing date of the communication reply seed will expire SIX (0) MONTH 15° from the mailing date of the communication reply in the communication reply seed will expire SIX (0) MONTH 15° from the mailing date of the communication reply and the submitted seed of the communication reply and the seed of the professor of the priority documents have been received. Claim(s) six are objected to by the Examiner. If approved, corrected drawings are required in reply to this Office action. If approved, corrected drawings are required in reply to this Office action. If approved, corrected drawings are required in reply to this Office action. If ap		Application No.		Applicant(s)	NA.				
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2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-6 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are allowed. 6) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a accepted or b objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a approved b disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b Some * c _ None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a _ The translation of the foreign language provisional application has been received. 15 _ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121. Attachment(s) Notice of References Cited (PTO-89	THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, - Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	66(a). In no event, howe within the statutory mini ill apply and will expire S cause the application to	ver, may a reply be time mum of thirty (30) days v SIX (6) MONTHS from th become ABANDONED	ly filed will be considered timely. e mailing date of this con (35 U.S.C. § 133).	nmunication.				
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SUPPLEMENTAL ACTION

1. This action is in response to applicant's supplemental amendment, Paper No. 18, received on November 7, 2002.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-4 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "can be" in claim 1, line 2 is vague and indefinite for it does not positively recite the claim limitation. Is the bag being supplied on a conveying surface?

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 5. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Geyssel (4,584,046).

Geyssel discloses an apparatus for applying a drinking straw to a receiving surface of a stand up bag comprising: transfer means (figure 9) which rotates a transfer drum 20, stand up bag 12, drinking straw 11, and conveying surface 13; the transfer means is arranged so that the drinking straw while being handed over encloses an acute angle θ (marked as θ by the examiner on figure 9) with the conveying surface.

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The angle θ corresponds to the angle forms by the stand up bag receiving surface and the opposite side surface of the bag lies on the conveying surface.

The preamble of the new added claim 6 merely states the intended use of the invention and not considers a limitation of the claimed invention. It has been held that "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim" Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969).

Conclusion

- 6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
- 7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

1148.

JOHN SIPOS
PRIMARY EXAMINER

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November 20, 2002